Legislative Summary LS-426E

BILL C-55: THE PUBLIC SAFETY ACT, 2002

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HOUSE OF COMMONS		SENATE	
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Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-55: THE PUBLIC SAFETY ACT, 2002*

INTRODUCTION

Bill C-55, the proposed Public Safety Act, 2002, received first reading in the House of Commons on 29 April 2002. The Bill replaces Bill C-42, which was given first reading on 22 November 2001; it received significant criticism and the Government did not proceed with it. Significant differences between this Bill and its predecessor will be noted in this document.(1) The Bill is one of three in the Government's legislative response to the events of 11 September 2001 in the United States. Bill C-36, the *Anti-terrorism Act*, received Royal Assent on 18 December 2001. On 28 November 2001, the House of Commons unanimously consented to a motion to delete from Bill C-42 section 4.83 in clause 5 amending the *Aeronautics Act*. The same day, that section was introduced as Bill C-44 in order to provide for speedier passage than consideration as part of Bill C-42 would have allowed for. It received Royal Assent on 18 December 2001.

Bill C-55 amends 20 existing Acts, and enacts a new statute to implement the Biological and Toxin Weapons Convention, which entered into force on 26 March 1975.

The purpose of this document is to provide a summary of the various aspects of the Bill. In general, the statutes being amended will be discussed in the alphabetical order in which they appear in the Bill. A number of statutes, however, are amended in a similar manner to provide for the making of interim orders if immediate action is required and these have been grouped together.

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) Amendments to the *Immigration Act* contained in Bill C-42 were dropped completely in Bill C-55 in view of the fact that the new *Immigration and Refugee Protection Act* is slated to come into force on 28 June 2002.

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PART 1: *AERONAUTICS ACT* (CLAUSES 2-23)

The purpose of the proposed amendments to the *Aeronautics Act* is to clarify and, in some cases, expand existing aviation security authorities. The amendments would enhance the ability of the federal government to provide a safe and secure aviation environment.

A. Interpretation

Clause 2(2) amends the existing extremely broad definition of "Canadian aviation document" in section 3(1) of the *Aeronautics Act* to make it subject to proposed section 3(3) of the Act. The effect is to remove security clearances, restricted area passes issued at aerodromes operated by the Minister of Transport, and other Canadian aviation documents specified in an aviation security regulation, from the Civil Aviation Tribunal review process contained in sections 6.6 to 7.2 of the Act. The Tribunal was established in 1986 as a technical body to review regulatory enforcement decisions as well as decisions related to the technical qualifications of pilots, air traffic controllers, aircraft maintenance engineers and other aviation personnel and organizations. Transport Canada does not consider it appropriate that the Tribunal review departmental decisions related to security clearances, restricted area passes, and whether an individual constitutes a security risk and thus proposes this amendment.

Clause 2(3) adds definitions, in section 3(1) of the Act, for the terms "aviation reservation system," "aviation security regulation," "emergency direction," "security clearance" and "security measure" for purposes of the Act.

B. Ministerial Delegations

Clause 3 amends section 4.3 of the Act to extend the Minister's ability to delegate powers, duties or functions to any "class of persons," and to expand the list of legislative instruments in respect of which delegations may not be made to include security measures and emergency directions, although the Minister may delegate his or her authority to make an order, security measure or emergency direction if the Act specifically authorizes the delegation. Currently, the Act authorizes the Minister to delegate his or her authority only to make orders closing airspace and aerodromes (section 4.3(3)).

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C. Charges

Clause 4 amends section 4.4(2) of the Act, by adding a new paragraph (a.1) to provide that regulations may impose charges in respect of any security measure carried out by or on behalf of the Minister. Currently, there is no explicit regulation-making authority to impose charges for security measures that the department (Transport Canada) carries out.

D. Aviation Security

Clause 5 of the Bill replaces sections 4.7 and 4.8 of the Act by proposed sections 4.7 to 4.87.

Proposed section 4.7 defines "goods" and "screening" for the purposes of proposed sections 4.71 to 4.85. "Goods" are defined to include anything that may be taken or placed on board an aircraft or brought into an aerodrome or other aviation facility. The current definition is restricted to things that may be taken or placed on board an aircraft. The definition for "screening" is similar to that which currently exists for "authorized search." The definition encompasses the various requirements that may be set out in three areas – aviation security regulations, security measures or emergency directions – that are designed to ensure that persons and/or goods do not possess and/or contain items that could constitute a threat to aviation security, prior to boarding an aircraft or entering, for example, a restricted area of an aerodrome. The definition also clarifies that a "screening" can include a physical search.

E. Aviation Security Regulations

In section 4.7(2), the Act currently authorizes the Governor in Council to make regulations respecting aviation security "for the purposes of protecting passengers, crew members, aircraft and aerodromes and other aviation facilities, preventing unlawful interference with civil aviation and ensuring that appropriate action is taken where that interference occurs or is likely to occur." The *Canadian Aviation Security Regulations* have been made pursuant to this enabling power.

Proposed section 4.71 of the Act grants much broader regulation-making authority than is currently the case. The section authorizes the Governor in Council to make regulations respecting "aviation security," and then goes on to provide examples and clarify the

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kinds of matters that can be addressed in the regulations, without limiting the generality of that broad term. Included among the matters on which regulations may be made are:

- the protection of the public, passengers, crew members, aircraft, aerodromes and other aviation facilities;
- restricted areas on aircraft or at aerodromes and other aviation facilities;
- the screening of persons and goods;
- the seizure or detention of goods in the course of screenings;
- the prevention of unlawful interference with civil aviation and the action to be taken if interference occurs;
- classes of persons required to have a security clearance;
- applications for security clearances;
- Canadian aviation documents deemed not to be such documents for the purpose of sections 6.6 to 7.2 of the Act (concerning the Civil Aviation Tribunal review process);
- security requirements for the design or construction of aircraft, aerodromes and other aviation facilities;
- security management systems;
- security requirements for equipment, systems and processes;
- qualifications, training and performance standards for classes of persons having security responsibilities;
- the testing of equipment, systems and processes; and
- the provision of security-related information to the Minister.

F. Security Measures

Proposed section 4.72 authorizes the Minister to make measures respecting aviation security, including measures addressing any matter that may be dealt with in the regulations. Before making a security measure, the Minister must consult with appropriate persons or organizations. The consultation may be bypassed if, in the Minister's opinion, the security measure is immediately required for aviation security or protection of the public. The Minister may carry out the requirements of a security measure whenever he or she considers it necessary to do so. Departmental sources point out that proposed section 4.72 incorporates

various provisions contained in the current Act, as well as certain provisions contained in the *Canadian Aviation Security Regulations*.

Departmental officials also note that it is important to distinguish between regulatory requirements of general application that are published in the *Canada Gazette*, pursuant to the *Statutory Instruments Act*, from those requirements which, by their very nature, must be capable of being made quickly and must be kept confidential. They point out that under the current aviation security legislative framework, security measures are prescribed by two Ministerial Orders: the *Aerodrome Security Measures Order* and the *Air Carrier Security Measures Order*. The Orders are currently exempted from the requirements of the *Statutory Instruments Act*, in the same way that security measures are exempted from the requirements of that Act pursuant to proposed amendments to section 6.2 (see clause 8 of the Bill).

The implementation of security measures is generally the responsibility of those to whom the measures are directed, in most cases air carriers and aerodrome operators.

Whereas the Act does not currently allow the Minister to delegate his or her authority to make orders prescribing security measures, proposed section 4.73 permits the Minister to authorize an officer of the department to make security measures, subject to any restrictions the Minister may specify, in circumstances where the measures are immediately required for aviation security or the protection of the public. According to departmental officials, this provision is intended to cover circumstances where a security measure is urgently required and the Minister is not available to approve it, for example, if the Minister is overseas on official business. A safeguard is provided in that a security measure made by an authorized officer expires after 90 days, unless it is earlier repealed by the Minister or the officer who made it.

Proposed section 4.74 states that a security measure may provide that it applies in lieu of, or in addition to, any aviation security regulation and that in the event of a conflict between the two, the security measure prevails to the extent of the conflict. The current Act is silent on which takes precedence if there is a conflict.

G. Foreign Aircraft Requirements

Proposed section 4.75, which is comparable to current section 4.7(3) of the Act, makes it an offence for the operators of foreign aircraft to land in Canada, unless the aircraft and all persons on board have been subjected to requirements that are acceptable to the Minister.

H. Emergency Directions

The Act does not currently provide for the issuance of emergency directions. Proposed section 4.76 authorizes the Minister to issue such directions in immediate threat situations, including directions respecting the evacuation of aircraft and aerodromes or other aviation facilities (or parts of them), the diversion of aircraft to alternative landing sites, and the movement of aircraft or persons at aerodromes or other aviation facilities. In addition, proposed sections 4.77-4.78 permit the Minister to authorize any officer of the Department of Transport to issue emergency directions, subject to such restrictions or conditions that the Minister may specify. An emergency direction may provide that it applies in lieu of or in addition to any aviation security regulation or security measure. If there is a conflict between an emergency direction and a security measure or aviation security regulation, the emergency direction prevails to the extent of the conflict.

I. Unauthorized Disclosure

Proposed section 4.79 is substantially the same as the current section 4.8, with the reference to an order made by the Minister under section 4.3(2) replaced by references to security measures and emergency directions. Hence, a person other than the person who made the security measure or emergency direction is prohibited from disclosing its substance to any other person, unless the disclosure is required by law or is necessary to give effect to the measure or direction. Notice must be given to the Minister where a court or other body intends to request the production or discovery of a security measure or security direction. If the court or other body concludes in the circumstances of the case that the public interest in the administration of justice outweighs in importance the public interest in aviation security, it must order the production of the security measure or emergency direction, subject to any restrictions or conditions that the court or other body considers appropriate.

J. Security Clearances

The Act does not currently provide explicit authority for requiring and issuing security clearances. The current security clearance program, as it applies to restricted area pass holders at major Canadian airports, has been implemented by regulations. Departmental officials point out that explicit legislative authority for the security clearance program and its extension to

persons who hold Canadian aviation documents (for example, all pilots) and to crew members is considered necessary in the current threat environment. Hence, proposed section 4.8 provides explicit authority for the Minister to grant or refuse to grant security clearances, as well as to suspend or cancel security clearances. Proposed section 4.8 spells out that the Minister can require a security clearance as a precondition to being: the holder of a Canadian aviation document; a crew member; or the holder of a restricted area pass. This is in addition to the Governor in Council's authority under proposed section 4.71(2)(g) to make regulations requiring classes of persons to have a security clearance.

K. Provision of Information

Proposed section 4.81 is a totally new provision that empowers the Minister or authorized departmental officers to require certain passenger information from air carriers and operators of aviation reservation systems. The information required to be provided, set out in the proposed schedule to the Act, must be for the purposes of transportation security and may pertain to the persons on board or expected to be on board a specific flight in respect of which there is an immediate threat, or to any particular person specified by the Minister.

Information provided under proposed section 4.81 may be disclosed to other persons in the department only for the purposes of transportation security. Similarly, it may be disclosed to the following persons outside the department only for the purposes of transportation security: the Minister of Citizenship and Immigration; the Minister of National Revenue; the chief executive officer of the Canadian Air Transport Security Authority; and any person designated under proposed sections 4.82(2) or (3). Information disclosed to the above specified persons may be further disclosed by them only for the purposes of transportation security and strict limits are placed concerning the persons to whom they may disclose the information.

Generally, information provided or disclosed under proposed section 4.81 must be destroyed within seven days after it was provided or disclosed. This applies notwithstanding any other Act of Parliament.

The Governor in Council may, by order, amend the proposed schedule to the Act, referred to in section 4.81, on the recommendation of the Minister.

Proposed section 4.82 is another totally new provision (not contained in Bill C-55's predecessor, Bill C-42), and it has been criticized by some observers. It authorizes

the Commissioner of the Royal Canadian Mounted Police (RCMP), the Director of the Canadian Security Intelligence Service (CSIS), and the persons they designate, to require certain passenger information (set out in the proposed schedule to the Act) from air carriers and operators of aviation reservation systems to be used and disclosed for transportation security purposes; national security investigations relating to terrorism; situations of immediate threat to the life, health or safety of a person; the enforcement of arrest warrants for offences punishable by five years or more of imprisonment; and arrest warrants under the *Immigration Act* and the *Extradition Act*. There is currently no statutory authority under which the RCMP and CSIS can require the production of passenger information.

Proposed section 4.82 authorizes the Commissioner of the RCMP to designate persons to receive and analyze the information provided by air carriers and operators of aviation reservation systems and match it with any other information under the control of the RCMP. Similarly, the Director of CSIS is empowered to designate persons to receive and analyze such information and match it with any other information under the control of CSIS.

Persons designated by the Commissioner or Director for the above purposes may disclose any information provided under the provision, and any information obtained as a result of matching the information with other information, to each other.

Persons designated by either official under proposed section 4.82 may disclose any information provided under the provision, or information obtained as a result of matching that information with other information, only in accordance with the disclosure regime set out in the provision (which stipulates specific disclosure purposes and parties to whom information can be disclosed) or for the purpose of complying with a subpoena or court order.

A person designated by the Commissioner or Director may disclose the information for purposes of transportation security to the Minister of Transport, the Canadian Air Transport Security Authority, any peace officer, any member of CSIS, any air carrier or operator of an aviation facility. Any information disclosed to the Canadian Air Transport Security Authority or to an air carrier or operator of an aviation facility must also be disclosed to the Minister of Transport.

A person designated by the Commissioner or Director may disclose information provided under the proposed section to an Aircraft Protective Officer if the designated person has reason to believe that the information may assist the officer to perform duties relating to

transportation security, and to any person if the designated person has reason to believe that there is an immediate threat to transportation security or the life, health or safety of a person.

A person designated by the Commissioner of the RCMP may disclose information provided under the section to any peace officer if the designated person has reason to believe that the information would assist in the execution of a warrant.

A person designated by the Director of CSIS may disclose information provided pursuant to the provision to an employee of CSIS for the purposes of a national security investigation related to terrorism. However, the disclosure must be authorized by a senior designated person.

A designated person who discloses information under proposed section 4.82 must prepare and keep a record setting out a summary of the information disclosed, the elements of information disclosed, the elements of information set out in the proposed schedule in respect of which there was disclosure, the reasons why the information was disclosed and the name of the person or body to whom the information was disclosed.

Information provided under the proposed section and information shared among designated persons must be destroyed within seven days after its receipt, unless it is reasonably required for security purposes, in which case a record must be prepared and kept setting out the reasons why the information is being retained. The Commissioner and the Director must cause at least an annual review to be undertaken of information retained pursuant to proposed section 4.82 and the Commissioner or Director, as the case may be, must order the destruction of the information if he or she is of the opinion that its continued retention is not justified. The Commissioner and the Director must each keep a record of their review. The destruction provision applies notwithstanding any other Act of Parliament.

Nothing in proposed section 4.82 precludes air carriers and operators of aviation reservation systems from providing any information if the provision of the information is otherwise lawful. As well, nothing in the proposed section prohibits the collection of information if the collection is otherwise lawful. In other words, the scheme does not override the otherwise lawful provision or collection of passenger information under other legal authorities, for example, the *Personal Information Protection and Electronic Documents Act*.

The Governor in Council may make regulations generally for carrying out the purposes and provisions of proposed section 4.82.

Departmental officials state that the rationale for proposed section 4.82 is to allow the RCMP and CSIS to access and analyze passenger information in order to effectively support the Air Carrier Protective Program with which the RCMP has been recently tasked, and under which RCMP members (Aircraft Protective Officers) will be placed on board Canadian aircraft. This information will enable them to determine which specific flights might be at risk and assess whether certain measures are required before a flight. Departmental officials note that because of the close links between transportation security and terrorism, the proposed provision also allows the information to be used by CSIS for national security investigations related to terrorism. As well, other limited uses of the information for the purposes of enforcing arrest warrants, as well as for addressing situations involving an immediate threat to life, health and safety are permitted.

Clause 6 amends section 4.83 of the *Aeronautics Act* (which already authorizes the type of passenger information scheme set out in the section by virtue of a recent amendment to the Act made by Bill C-44)[2] to clarify the circumstances under which an air carrier may provide information to a foreign state in accordance with the regulations. It also clarifies the circumstances in which government institutions (within the meaning of section 3 of the *Privacy Act*) can obtain information provided to a foreign state under section 4.83. Under the proposed amendment, an air carrier may provide to a country information on passengers on board, or expected to be on board, an aircraft departing from Canada or on board, or expected to be on board, a Canadian aircraft departing from anywhere, only if that flight is scheduled to land in that country. According to departmental sources, the section is also being clarified to ensure that departments administering Acts that prohibit, control or regulate the importation or exportation of goods or the movement of people in or out of Canada are able to obtain information provided to foreign authorities under the provision. The proposed amendment adds enforcement of border-related statutes as a permitted purpose.

L. Screenings

Proposed section 4.84, similar to current section 4.7(1), authorizes the Minister to designate persons to conduct screenings under the Act.

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(2) Bill C-44, *An Act to amend the Aeronautics Act*, S.C. 2001, c. 38. The Act came into force on the same day it received Royal Assent – 18 December 2001.

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Proposed section 4.85 establishes a number of prohibitions related to the screening of passengers, other persons, goods and conveyances.

Under proposed section 4.85, a person is prohibited from entering or remaining in an aircraft, an aviation facility, or a restricted area of an aerodrome unless the person permits his or her person and goods to be screened in accordance with the applicable aviation security regulation, security measure or emergency direction.

Although the current Act covers passengers and goods boarding or on board aircraft, it does not address the screening (i.e., search) of persons who wish to enter aviation facilities or restricted areas of aerodromes.

Proposed section 4.85 also prohibits:

- the operator of a conveyance (for example, a truck) from entering or remaining in an aviation facility or an aerodrome unless the operator permits a screening of the conveyance in accordance with aviation security regulations, security measures or emergency directions;
- air carriers from transporting persons and goods unless the persons and goods have been screened in accordance with the applicable aviation security regulation, security measure or emergency direction; and
- persons who accept goods for transportation and who are required to screen those goods, from tendering the goods for transportation by air, unless they have screened the goods in accordance with the relevant aviation security regulation, security measure or emergency direction.

M. Air Carrier and Aerodrome Assessments

Proposed section 4.86 authorizes the Minister to conduct aviation security assessments, outside Canada, of air carriers that operate or intend to operate flights to Canada or of facilities relating to the operations of those carriers. Currently, the Act is silent on the authority of the Minister and departmental inspectors outside of Canada, although departmental officials point out that this is current practice with notice to and/or approval of foreign authorities.

N. Verifying Compliance and Testing Effectiveness

Departmental inspectors and operator personnel are required, from time to time, to conduct tests to verify compliance with security requirements and the effectiveness of current

equipment, systems and processes, for example, trying to clear security with weapons. Proposed section 4.87 makes clear that a person authorized to conduct such compliance and other testing does not commit an offence if the person commits an act or omission that is required in the course of any such verification or testing and that would otherwise constitute a contravention of an aviation security regulation, security measure or emergency direction. The current Act does not address this issue.

O. Restrictions and Prohibitions for Safety or Security Purposes

The authority in section 5.1 of the current Act to issue notices to close or restrict access to airspace is limited to situations where the prohibition or restriction is necessary to ensure aviation safety, for example, closing airspace related to the conduct of airshows. Clause 8 of the Bill amends section 5.1 by adding references to aviation "security" and the "protection of the public" as grounds for issuing notices to close or restrict access to airspace.

P. General Provisions respecting Regulations, Orders, etc.

Departmental sources point out that clause 9 makes a number of amendments to section 5.9 that are needed to put security measures and emergency directions on the same footing and subject to the same procedural authorities and requirements as regulations and orders made under the Act.

Clause 10 amends section 6.2 of the Act so as to make security measures and emergency directions exempt from the requirements of the *Statutory Instruments Act*. This allows them to be made on an urgent basis and ensures their confidentiality. The *Aeronautics Act* currently makes "orders" containing security measures exempt from the requirements of the *Statutory Instruments Act*.

Proposed section 6.2(2) provides that no person shall be found to have contravened a security measure or emergency direction (or the other instruments listed in section 6.2(1)) unless it is proved that reasonable steps were taken to bring the "purport" of the measure or direction to the notice of the persons likely to be affected by the measure or direction.

Q. Interim Orders

Under the Bill, aviation *security* matters can be addressed on an immediate basis by the making of security measures and emergency directions. The aviation *safety* counterpart to security measures and emergency directions is the interim order. In its current form, the Act (in

section 6.41) authorizes interim orders to be issued only to give immediate effect to recommendations of the Transportation Safety Board or of other persons authorized to investigate an aviation accident or incident. The Act does not currently authorize the Minister to delegate his or her authority to issue interim orders, nor does it require consultations on interim orders before they are made.

Clause 11 (proposed section 6.41) expands the Minister's authority to make an interim order also to deal with any situation or state of affairs that, in the Minister's opinion, requires immediate action. This is the most important aspect of clause 11. According to the department, safety issues requiring immediate redress can be identified by a number of different sources, including foreign aviation authorities, manufacturers, operators, and departmental inspectors. The department points out the importance of the Minister being able to make an interim order to address any urgent situation identified by any source, and not only to implement recommendations of accident investigation bodies, as is currently the case.

The Minister may delegate the authority to make an interim order to an officer of the department. An interim order may only be made if it is necessary for aviation safety or the protection of the public, and consultations with appropriate persons or organizations must be held before such an order is made.

An interim order must be published in the *Canada Gazette* within 23 days after the day on which it was approved. In addition, a copy of each interim order that is of general application must be tabled in each House of Parliament on any of the first 15 days on which the House is sitting after it is made.

R. Measures relating to Canadian Aviation Documents

Clause 13 makes a number of amendments to section 7 of the Act, the only substantive one being the amendment to section 7(7), which sets out what the Tribunal can decide when it holds a review hearing under section 7(1) concerning a suspension made by the Minister. If the Minister's decision relates to a person's designation under proposed section 4.84 to conduct screenings, the Tribunal can confirm the Minister's decision or refer the matter back to the Minister for reconsideration; if the Minister's decision relates to any other Canadian aviation document, the Tribunal can confirm the Minister's decision or substitute its own decision. The department does not consider it appropriate that the Tribunal be the final authority on whether a person conducting screening poses an immediate threat to aviation security.

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Clause 14 makes housekeeping amendments to section 7.2 of the Act (respecting Tribunal appeals), consequential to the amendments effected by clause 13. At both the review-level hearing and the appeal-level hearing, the Tribunal is limited to confirming the department's suspension under section 7, or referring it back to the department for reconsideration, when the case involves the Minister's suspension of a person's designation to conduct screenings.

S. Prohibitions, Offences and Punishment

Clause 17 adds a new section 7.41 to address unruly and dangerous acts committed on board aircraft in flight. It creates the offence of endangering the safety or security of an aircraft in flight or of persons on board an aircraft in flight by intentionally interfering with the performance of the duties of any crew member, lessening the ability of a crew member to perform his or her duties, or interfering with any person who is following the instructions of a crew member. The section imposes heavy penalties.

T. Procedure relating to Certain Contraventions

Clause 18 amends section 7.6(1)(a) to include references to "any provision of this Part" (of the Act), and to "security measures." The purpose of the amendment is to allow offence-creating provisions of the Act and of the security measures to be designated as being subject to the administrative monetary penalty scheme set out in sections 7.7 to 8.2 of the Act. The Act does not currently provide for administrative monetary penalties to be assessed for contraventions of the Act. Administrative monetary penalties may currently be assessed for contraventions of security measures, but, according to department officials, this is done indirectly through the requirement in the regulations to comply with an order authorized to be made pursuant to section 4.3(2).

Proposed paragraph (a.1) is being added to section 7.6(1) to allow for a maximum penalty of $50,000 for failure to provide information requested under proposed sections 4.81(1) and 4.82(4) and (5).

Clause 19 amends section 8.3(1)(a) of the Act to make a reference to aviation security so that aviation *security* considerations, as well as aviation *safety* considerations, are taken into account when considering whether enforcement notations should be expunged from an individual's or a company's records.

U. Enforcement

Clause 20 amends section 8.5 of the Act to extend the "due diligence" defence to contraventions of security measures and emergency directions, neither of which is referred to in the current Act.

Clause 21(1) amends section 8.7(1)(a) of the Act to include a reference to "audits" and to clarify that departmental inspectors can enter into an aviation facility or any premises used by the Canadian Air Transport Security Authority not only for the purpose of conducting an inspection of the aerodrome or facility, but also for the purpose of conducting an inspection or audit of a third party. Clause 21(2) adds a new section 8.7(1.1) to clarify the Minister's authority to have access to systems, records and equipment, for the purposes of an inspection or audit.

Clause 22 adds a new section 8.8 to the Act, requiring persons who are in possession or control of places being inspected or audited, and persons found therein, to provide the Minister with all reasonable assistance and relevant information. The amendment is complementary to that in clause 19 and ensures that the department's inspectors will be provided with such assistance and information as may be required for inspection and audit purposes.

V. Schedule

Clause 23 adds the schedule, referred to in proposed section 4.81, to the *Aeronautics Act* in order to set out the passenger information that is to be provided to the Minister under that provision. As noted earlier, the section permits the Governor in Council, on the recommendation of the Minister of Transport, to amend the schedule.

PARTS 1, 3, 5, 8, 9, 13, 15, 17, 18 AND 19: INTERIM ORDERS

Eight parts of the Bill amend various statutes to provide a new power permitting the responsible Minister to make interim orders in situations where immediate action is required. Two other parts, dealing with the *Aeronautics Act* and the *Canadian Environmental Protection Act, 1999*, extend the power of the Minister to make such orders. The statutes being amended to introduce the power, and the respective Ministers, are:

- *Department of Health Act* – Minister of Health;
- *Food and Drugs Act* – Minister of Health;

- *Hazardous Products Act* – Minister of Health;
- *Navigable Waters Act* – Minister of Fisheries and Oceans;
- *Pest Control Products Act* – Minister of Health;
- *Quarantine Act* – Minister of Health;
- *Radiation Emitting Devices Act* – Minister of Health; and
- *Canada Shipping Act*; *Canada Shipping Act, 2001*[3] – Ministers of Transport and Fisheries and Oceans.

With the exception of the extension of powers under the *Aeronautics Act* (Part 1 of the Bill) and the *Canadian Environmental Protection Act* (CEPA, Part 2 of the Bill), the interim order provisions follow a similar pattern:

- The Minister may make an interim order on a matter that would otherwise be required to be made, in a regulation or otherwise, by the Governor in Council.
- An interim order may be made if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to human life, health, safety, security, or the environment, depending on the statute.
- An interim order must be published in the *Canada Gazette* within 23 days.
- An interim order ceases to have effect after 45 days (compared to 90 days in Bill C-42) unless it has been, variously, confirmed by the Governor in Council, repealed or has lapsed, or been replaced by an identical regulation; even if approved by the Governor in Council, the maximum time an interim order may remain in effect is one year.
- New to this Bill is the requirement to table a copy of each interim order in Parliament within 15 sitting days after it has been made.
- A person who contravenes an interim order that has not yet been published in the *Canada Gazette* cannot be convicted of an offence unless the person has been notified of the order, or unless reasonable steps have been taken to inform those likely to be affected by it.
- Interim orders are exempt from certain requirements of the *Statutory Instruments Act*, the most important of which are:

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(3) The latter Act received Royal Assent on 1 November 2001 and will largely repeal the *Canada Shipping Act*.

- The requirement for lawyers in the Regulations Section of the Legislative Services Branch of the Department of Justice to examine proposed regulations to see if they: are authorized by the statute; are not an unusual or unexpected use of the statutory authority; do not trespass unduly on existing rights and freedoms and are not inconsistent with either the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*; and meet required drafting standards.[4] If flaws are found, proposed regulations are referred back to the originating department for consideration.
- The requirement to transmit regulations within seven days of their making to the Clerk of the Privy Council for registration.[5]

As noted above, the existing power of the Minister of Transport under the *Aeronautics Act* to make interim orders would be broadened. Currently, the Minister may make such orders for the purpose of giving immediate effect to any recommendation arising from the investigation of an air accident or incident where such an order is necessary for air safety or the safety of the public. Bill C-55 broadens that power to cover any situation that, in the opinion of the Minister, requires immediate action to ensure air safety or to protect the public. It also permits the power to be delegated to any officer of the department, subject to any limitations that the Minister may specify. Another new aspect is the requirement to consult with any person or organization considered appropriate before making the interim order.

The time limitations placed on the existing power to issue interim orders are retained for the broadened power, and they differ from those described above.[6] The same exemptions from the *Statutory Instruments Act* that were outlined above for the new powers are contained in the existing *Aeronautics Act*, and the Bill continues them. New to this Bill, as compared to Bill C-42, is the requirement to table any interim orders under this Act in Parliament.

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(4) The Act's actual wording requires the examination to be conducted by the Clerk of the Privy Council in consultation with the Deputy Minister of Justice.

(5) A regulation is "made" when it is signed by the authority designated to make it.

(6) An interim order under the *Aeronautics Act* is in force for only 14 days unless approved by the Governor in Council in that period. The order may remain in force for two years; if a regulation having the same effect is made in that period, the order ceases to have effect.

The *Canadian Environmental Protection Act, 1999* already permits the Minister to make interim orders where immediate action is required to deal with significant dangers.(7) Bill C-55 adds that power to Part 8, Environmental Matters Relating to Emergencies. The provisions added by the Bill differ somewhat from those described above because they follow the existing model. For example, the interim order may last only 14 days if not confirmed by the Governor in Council (compared to 45 days for the other statutes) and a maximum of two years (compared to one year for the others). The CEPA provisions also require a commitment to consult with affected governments and other federal ministers before the Governor in Council may approve an order. This parallels existing provisions elsewhere in the Act. Bill C-55 does not include a requirement that interim orders under CEPA be tabled in Parliament.

As is the case now, interim orders are exempted from the provisions of the *Statutory Instruments Act* outlined above. It is noteworthy that in several (but not all) of the existing circumstances in CEPA where the Minister may make interim orders, there is an explicit instruction to include in the required annual report, a report on the administration of the Division in which the power is found. This requirement is not found in the Bill C-55 amendment.

In assessing the provisions governing interim orders, the following points are worth reiterating:

- Ministerial powers to make interim orders when immediate action is required are not entirely new in federal statutes.
- The new provisions may last longer than the existing ones before requiring confirmation by the Governor in Council (45 days, compared to 14 days).
- If confirmed, but not made the subject of a regulation, an interim order may last no longer than one year. Compare this to the two-year period in the *Aeronautics Act* and CEPA.
- The same exemptions to the *Statutory Instruments Act* that apply now to the *Aeronautics Act* and CEPA apply to the statutes that have not to this point contained a power to make interim orders.

The addition of a requirement to table interim orders in Parliament, present in Bill C-55 but not in C-42, responds to criticism concerning the lack of parliamentary oversight. For comparison, reference may be made to orders and regulations made by the Governor in

(7) The dangers relate to toxic substances, international air pollution, and international water pollution.

Council under the *Emergencies Act*. They must be tabled in each House of Parliament within two sitting days after they are made.[8] A specified number of Senators or Members of the House of Commons can then require that there be a debate and a vote on whether the order or regulation should be revoked or amended.

PART 2: *CANADIAN AIR TRANSPORT SECURITY AUTHORITY ACT* (CLAUSES 24-25)

Clause 24 amends the definitions of "screening" and "screening point" in section 2 of the *Canadian Air Transport Security Authority Act* to include emergency directions made under the *Aeronautics Act*. The reason for the amendment is that proposed sections 4.76 and 4.77 of the *Aeronautics Act* authorize the making of emergency directions in the event of an urgent security situation (the Act does not currently refer to emergency directions). The *Canadian Air Transport Security Authority Act* is therefore being amended to add the requirement to comply with such emergency directions as they relate to the delivery of screening services in Canada.

Clause 25 replaces section 29 of the Act to permit the Canadian Air Transport Security Authority to enter into agreements with the operators of aerodromes designated by regulations, for the purposes of contributing to the costs of policing at those aerodromes. The Act currently authorizes the Authority to enter into such agreements only with designated airport authorities as defined in the *Airport Transfer (Miscellaneous Matters) Act*.

PART 4: HOAXES REGARDING TERRORIST ACTIVITY (CLAUSE 32)

Part 4 (clause 32) of the Bill creates a new *Criminal Code* offence (s. 83.231) of perpetrating a hoax regarding terrorist activity.

"Terrorist activity" is defined in section 83.01(1) of the *Criminal Code*, which was enacted in December 2001 as part of the *Anti-Terrorism Act*, S.C. 2001, c. 41 (formerly

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(8) Regulations or orders required to be secret must be referred to a Parliamentary Review Committee, which meets in private and has the power to amend or revoke the order or regulation.

Bill C-36). Under that definition, terrorist activity encompasses acts or omissions done inside or outside Canada:

- which amount to offences under a series of international conventions dealing with such things as the safety and security of aviation, maritime navigation, and internationally protected persons, as well as the protection of nuclear material, and the suppression of terrorist bombings and terrorist financing; or
- which involve the intentional causing of death or serious bodily harm by violence, the endangering of a life, the causing of serious risk to public health or safety, the causing of substantial property damage, or the causing of serious interference with an essential service, facility, or system, where such acts or omissions are done in whole or in part for political, religious, or ideological reasons, and with the intention of intimidating the public or compelling a government or organization to do or refrain from some act.

This definition of "terrorist activity" expressly excludes ordinary acts of advocacy, protest, dissent, work stoppage, or the expression of political, religious or ideological thoughts, beliefs or opinions *per se*.

The new hoax offence covers those who, without lawful excuse, and with the intent of causing any person to fear death, bodily harm, substantial property damage, or substantial interference with use or operation of property:

- cause information to be conveyed, without believing in its truth, or
- commit some other act

that, "in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur" (s. 83.321(1)).

Where death or injury do not result, the new terrorist hoax offence is punishable by a maximum sentence of imprisonment for five years, if prosecuted by indictment, or imprisonment for up to six months and/or a maximum fine of $2,000 on summary conviction (s. 83.321(2)). If a person causes bodily harm to another by such a hoax, the person is liable to imprisonment for up to ten years on indictment, or for up to eighteen months on summary conviction (s. 83.321(3)). Where the death of a person is caused by such a hoax, the offence is punishable by life imprisonment (s. 83.321(4)).

Clause 106 of the Bill adds the new terrorist hoax offence to the list of offences in section 183 of the *Criminal Code* in respect of which electronic surveillance may be authorized.

The new terrorist hoax offence is intended to fill a gap in the existing criminal law. Real acts of terrorism are already crimes in Canada. For some hoaxes, it may be possible to lay charges under existing provisions of the *Criminal Code*, such as those pertaining to public mischief (s. 140), spreading false news (s. 181), false messages (s. 372), and mischief to property (s. 430(1)). However, these offences do not directly address the problem of hoaxes, such as terrorism-related hoaxes, that have the potential to cause public panic, system disruptions, or waste and misallocation of critical security and other resources, on a significant scale.

In relating to all terrorist activity, the new terrorist hoax offence is broader than the hoax offence proposed in Part 3 of Bill C-42, which focused only on hoaxes pertaining to the use of explosive or other lethal devices.

PART 6: *EXPLOSIVES ACT* (CLAUSES 34-50)

Part 6 of Bill C-55 is identical to Part 5 of Bill C-42. It amends the *Explosives Act* to implement the *Organization of American States Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials* as it relates to explosives and ammunition. It prohibits illicit manufacturing of explosives and illicit trafficking in explosives and components of ammunition. It allows for increased control over the import, export, transportation through Canada, acquisition, possession and sale of explosives and certain components of explosives, and provides increased penalties for certain offences.

Specifically, the Bill would broaden the application of the *Explosives Act* to include "restricted component" and "inexplosive ammunition component." A number of sections in the Act are amended accordingly. The effect is to make provisions in the existing Act applicable not only to the explosive material that is part of ammunition but also to cartridge cases, bullets and other projectiles. The Bill also amends the Act by expanding the scope of its application to include acquisition, exportation and transportation through Canada, in addition to manufacture, sale, storage and importation.

As well as the changes proposed to the wording of existing sections, some new and more substantial sections are proposed that establish new rules regarding the possession of

explosives and any restricted component (clause 37), and the banning of illicit trafficking in explosives and inexplosive ammunition components (clause 38). Under clause 37, it is forbidden to possess any restricted component in addition to the current prohibition on the possession of explosives, unless authorized by the Act or any exemption. The Governor in Council may make regulations prescribing a component of an explosive and providing that only a stipulated person or body, or a class of persons or bodies, has the right to acquire, possess or sell such a component (clause 36(1)). However, clause 36(2), and the new section 6(2) proposed in clause 37(5), authorize the Minister to exempt any body or person, or any class of persons or bodies, from the ban on possessing explosives or restricted components of explosives, as provided in clause 37(3). Clause 38 introduces new prohibitions designed to counter illicit trafficking in all its forms (acquiring, selling, transporting) of either explosives or inexplosive ammunition components.

Clause 39 replaces section 9 of the *Explosives Act*. The current requirement for a permit to export and transport explosives would be extended to inexplosive ammunition components. In the same vein, clauses 40 and 41 extend inspection and seizure measures to cover restricted and inexplosive components. Breaches of the law would be punishable by considerably higher maximum penalties. For example, fines that used to be up to $5,000, $10,000 or $20,000 can now go as high as $250,000 or $500,000 depending on the type of offence. Imprisonment for terms of up to two or five years is also available.

Some individuals, such as hunters, in particular those who make their own ammunition, raised concerns about the proposed expansion, by Bill C-42, of the scope of the *Explosives Act*, especially through the new definitions. Their main concern centred on the fact that some of the provisions of the existing Act, as well as new measures introduced in Bill C-42 and still included in Bill C-55, will henceforth apply not only to explosives as defined in the Act but also to restricted components of explosives (which are to be prescribed by regulation) and inexplosive components of ammunition.

The people who will be responsible for applying the amended Act do not think that the proposed measures will interfere with supplies for hunters and people who manufacture their own ammunition. It is not impossible, however, that suppliers will be monitored more strictly under the measures proposed by Part 6 of Bill C-55, which could have some impact on supplies.

PART 7: *EXPORT AND IMPORT PERMITS ACT* (CLAUSES 51-64)

Clauses 51 to 64 (48 to 61 in Part 6 of Bill C-42) amend the *Export and Import Permits Act*, which gives the Government the power to establish an Export Control List in order to control the export of certain goods. One reason for establishing such a list was the need to control the export of weapons and munitions as well as any article of a strategic nature that could be used in a manner detrimental to Canada's security. Canada must also control exports to meet its international commitments to prevent, among other things, the proliferation of missile technology as well as biological, chemical and nuclear weapons. Furthermore, Canada has certain obligations concerning the export of goods it obtains from the United States; these obligations include ensuring that they do not reach countries that may use them improperly and contribute to regional or international instability. In the wake of the 11 September 2001 attacks, the Government decided to amend the *Export and Import Permits Act* to give itself the explicit power to control the transfer as well as the export from Canada of technology; the Minister of Foreign Affairs and International Trade is expressly directed to consider international peace, security or stability as criteria for export or transfer permits. The measures are also a response to Resolution 1373 passed by the Security Council of the United Nations; among other things, that resolution declared that all countries should contribute to efforts to eliminate the supply of weapons to terrorists.

Clause 51 (clause 48 in C-42) changes the long title of the *Export and Import Permits Act* by adding the words "and transfer of goods and technology." Indeed, most of the clauses in Part 7 basically add the words "transfer" and "technology" to various sections of the Act. Thus, clause 52 (clause 49 in C-42) indicates that technology as well as goods will be identified in the Export Control List as defined in subsection 2(1), while clause 53 (clause 50 in C-42) amends section 3 so that the list covers transfers as well as exports. Clause 52 (clause 49(2) in C-42) states that the word "technology" covers technical data, technical assistance and information necessary to develop, produce or use an article included in the list. It also defines "transfer" as the disposal or disclosure of technology. Clause 54 (clause 51 in C-42) adds "transfer" and "technology" to section 4, which gives the Governor in Council the authority to establish an Area Control List to identify the countries covered by export controls.

The remaining clauses are largely technical and consequential. Of note, however, is the provision in clause 55 (clause 52 in C-42) that the Minister may consider the safety or

interests of Canada, or peace, security or stability elsewhere in the world. Clause 55 is the only clause in this part of Bill C-55 where the text has been modified from that in C-42. Section 7(1.01)(a) in C-42 referred to "the safety or interests of Canada." However, in C-55, the word Canada is replaced by the words "the State by being used to do anything referred to in paragraphs 3(1)(a) to (n) of the *Security of Information Act*."

PART 10: *MARINE TRANSPORTATION SECURITY ACT* (CLAUSE 69)

Clause 69, a new provision not included in Bill C-55's predecessor, Bill C-42, amends the *Marine Transportation Security Act* by adding a new section 11.1 to permit the Minister of Transport, under certain conditions, to enter into agreements respecting security of marine transportation and to make contributions or grants in respect of the cost or expense of actions to enhance security on vessels or at marine facilities. The provision ceases to apply three years after the day on which it comes into force. According to departmental sources, this provision is being added because Canada Port Authorities have identified a need for additional security initiatives which may require federal funding assistance; it is expected that any security initiative will be completed within three years.

PART 11: *NATIONAL DEFENCE ACT* (CLAUSES 70-81)

A. Definitions

Clause 70 changes the definition of the words "emergency" and "Minister" in subsection 2(1) of the *National Defence Act* while adding "controlled access military zone" and its definition to the same subsection. The current definition of emergency in the Act includes war, invasion, and a riot or insurrection, real or apprehended, as situations in which an emergency is deemed to exist. When there is an emergency, various sections of the Act can put the Canadian Forces on an operational footing. However, it was considered necessary to add "armed conflict" to the list because "war" is considered a formally declared war whereas armed conflicts can exist without formal declarations of war. As for the word "Minister," which in the Act usually refers to the Minister of National Defence, the addition of a new Part VII, which provides for the establishment of a job protection mechanism for Reservists, makes an exception.

With regards to the new Part VII, the Minister in question can be a Minister other than the Minister of National Defence.

B. References to the North American Aerospace Defence Command Agreement

Subsection 16(1) of the Act currently authorizes the Governor in Council to establish and authorize the maintenance of a component of the Canadian Forces, called the special force, to deal with an emergency under the *Charter of the United Nations* and the *North Atlantic Treaty*. Clause 71 amends subsection 16(1) mainly by adding the words "North American Aerospace Defence Command Agreement." This amendment to subsection 16(1) reflects the important role played by the North American Aerospace Defence Command (NORAD) Agreement between Canada and the United States in continental and homeland defence. Increased emphasis has been put on the surveillance by NORAD of Canadian and U.S. airspace since the 11 September 2001 attacks as well as on various measures, often grouped under the term "homeland defence," to prevent or to deal with the consequences of terrorist attacks within North America. Although NORAD activities were covered by the words "any other similar instrument" in subsection 16(1), the direct reference to NORAD in the amended version highlights the importance of NORAD in efforts against terrorism.

Similarly, clause 72 amends subsection 31(1), which authorizes the Governor in Council to place Canadian Forces personnel on active service anywhere in and beyond Canada in an emergency, to defend Canada or in consequence of actions undertaken under the UN Charter and the *North Atlantic Treaty* or other similar instruments. The amendment adds the NORAD Agreement to that list and also places the United Nations in a separate category in recognition of its special status as something more than a collective security organization.

C. Reserve Military Judges Panel

Clause 73 adds sections 165.28 to 165.32 to the *National Defence Act* in order to establish the Reserve Military Judges Panel. The amendment's goal is to make more military judges available to meet rising demands for judicial services, especially as a result of the increased tempo of military operations since the terrorist attacks of September 2001. The amendment allows the Governor in Council to name to the panel officers who are members of the Reserves and who have previously performed the duties of a military judge.

Under new section 165.31, it is the Chief Military Judge who, as supervisor of all the military judges in the Forces, selects Reserve officers from the panel to perform the duties of military judges. The Office has been faced with a shortage of military judges for some time, as indicated by its document entitled "Level 1 Strategic Letter" dated 31 October 2000. There has been some concern that the shortage of military judges could cause delays in the scheduling of trials, and the employment of Reserve judges was viewed as one option to avoid such a situation. Because military judges can be called upon to preside at courts martial in operational theatres, the deployment of Canadian Forces units as part of international efforts against terrorism raises the possibility of even greater demands on the existing pool of military judges.

D. Controlled Access Military Zones

Clause 74 adds new section 260.1 to the Act, which authorizes the Minister of National Defence "personally," on the recommendation of the Chief of the Defence Staff, to designate temporary "controlled access military zones." In Bill C-42, clause 84 authorized the designation of "military security zones." A controlled access military zone can be created only in relation to: (a) a defence establishment; (b) military or departmental property outside of a defence establishment; or (c) a visiting vessel, aircraft or "other property" of a foreign military force. C-42 also mentioned (d) property, a place or a thing "that the Canadian Forces have been directed to protect," but this is not in Bill C-55. According to section 260.1(12) (260.1(4) in C-42), Canadian Forces personnel can permit, prohibit, restrict or control the access of unauthorized persons to such a zone for the period of time specified in the designation. The period can be up to a maximum of one year, but designations can be renewed. Section 260.1(14) provides that no court action may be brought by a person who suffers loss, damage or injury as a result of the designation of a controlled access military zone; but section 260.1(15) states that the government must compensate such individuals from the Consolidated Revenue Fund. Clause 80 amends section 288 by adding the words "controlled access military zone" so that any person contravening regulations concerning access to, exclusion from, and safety and conduct in, on or about a controlled access military zone can be fined up to $1,000 and/or given a prison term of up to 12 months.

Clauses 75(1) and 76 add controlled access military zones to the places in respect of which the Governor in Council may make regulations concerning inspections and searches of persons and of personal property.

The power to designate a controlled access military zone has raised considerable controversy. For example, it has been suggested that clause 84 in Bill C-42 would have allowed the Minister of National Defence to designate the area where an international summit meeting is taking place as a military security zone. However, Bill C-55 limits the areas where a controlled access military zone can be designated to a defence establishment, property outside of a defence establishment provided for the Canadian Forces and the department, and a vessel, aircraft or other property of a visiting military force. Indeed, for property outside a defence establishment, Bill C-55 is even more restrictive than C-42, because section 260.1(1)(b) refers to property provided for the Forces or the department whereas the equivalent section in C-42, 260.1(2)(b), referred to material or property under the control of Her Majesty.

With regard to the dimensions of the zones, there is little difference between the two bills except for the fact that in section 260.1(3) in C-42 there was a direct reference to the responsibility of the Minister to ensure that they are not greater than reasonably necessary, while the equivalent section in C-55, 260.1(4), does not mention the Minister. However, Bill C-55 is more precise than the previous Bill concerning notification of the designation of a zone and the renewal process. Section 260.1(10) (260.1(6) in C-42) calls on the Minister to give notice of a designation as soon as possible. Bill C-55 adds a new section, 260.1(11), which calls on the Minister to publish in the *Canada Gazette* a notice of a designation, renewal, variance or cancellation within 23 days. With regard to renewals, section 260.1(7) states that the Minister "personally," on the recommendation of the Chief of the Defence Staff, can renew a designation. However, if the renewal makes the designation last for more than one year, it is the Governor in Council that takes the decision. These and other changes were likely made in response to criticism that section 260.1 gave too much power to the Minister.

Currently, various sections in the *National Defence Act*, as well as the Royal Prerogative, can authorize the deployment of military personnel to any area of the country. For example, under sections 274 to 285 of the *National Defence Act*, Canadian Forces units can be deployed to aid the civil power whenever it is beyond the powers of the latter to suppress, prevent or deal with a riot or disturbance of the peace that is occurring or is likely to occur. Military deployments in these circumstances are made at the request of provincial attorneys

general. Section 273.6(1) of the *National Defence Act* also allows the Governor in Council or the Minister of National Defence to authorize the Canadian Forces to perform any duty involving "public service." Also, under section 273.6(2), the Governor in Council, or the Minister of National Defence on the request of the Solicitor General of Canada or any other federal minister, can authorize the Forces to provide assistance "in respect of any law enforcement matter." The Governor in Council or the Minister of National Defence may consider military assistance necessary if this assistance is in the national interest and if the matter cannot be effectively dealt with except with the assistance of the Canadian Forces.

E. Computer Systems and Networks and Commissioner of the CSE

Clause 77 creates a new Part V.2 of the Act, dealing with the interceptions of communications involving the Department of National Defence (DND) or Canadian Forces computer systems. This new provision ensures that DND and the Canadian Forces have the authority to protect their computer systems networks and the information they contain from attack or manipulation. The vulnerability of computer systems to interference and outright attacks has been a growing concern in recent years, especially within military forces, which are increasingly dependent on information technology for success on the battlefield and for carrying out other operations. Although various measures have been taken to protect the computer systems used by the department and the Forces from intrusions from outside sources, protection is also needed against actions from within the department or Forces that can accidentally or deliberately damage the systems. For example, someone from outside the department or the Forces could send an e-mail which could subsequently damage military computer systems or networks, or someone within the department or the Forces could sabotage systems or networks or use them for purposes which contravene the Code of Military Discipline or the *Criminal Code*.

New section 273.8 (273.7 in C-42) allows the Minister of National Defence to authorize in writing public servants in the department or persons acting on behalf of the department or the Forces who operate, maintain or protect computers and networks to intercept private communications. Sections 273.7(1) and (2) in C-42 described the private communications as "originating from, directed to or transiting through any" computer system or network. Sections 273.8(1) and (2) in C-55 go into greater detail since they state that these

communications are "in relation to an activity or class of activities specified in the authorization, if such communications originate from, are directed to or transit through" any computer system or network.

The interception can be carried out only in order to identify, isolate or prevent the unauthorized use of, interference with, or damage to departmental and military computers and networks. The Minister may also authorize in writing the Chief of the Defence Staff to direct military personnel to carry out such interceptions. In either case, the Minister must be satisfied that certain conditions are met. These are that:

- the interception is necessary to identify, isolate or prevent "any harmful" unauthorized use of, "any" interference with, or "any" damage to the systems or networks or data, and that measures are in place to ensure that only information that is essential for these purposes will be used or retained (the words within quotation marks are in sections 273.8(1), (2) and (3) of C-55, but not in the corresponding sections in C-42);
- the information cannot be reasonably obtained by other means; and
- measures are in place to protect Canadians' privacy in the use or retention of the information.

According to section 273.8(4), authorizations may contain conditions to protect the privacy of Canadians. While C-42 mentioned information "derived from" private communications, C-55 says "contained in." Authorizations or renewals are for periods not exceeding one year. Part VI of the *Criminal Code*, which otherwise prohibits the interception of private communications occurring within Canada, does not apply. In addition, according to section 273.8(9), government officials are not civilly liable for improper disclosure or use of intercepted information under section 18 of the *Crown Liability and Proceedings Act*. However, compared to C-42, C-55 adds the following words to section 273.8(9)(a) after the word "section": "if the use or disclosure of the communication is reasonably necessary to identify, isolate, or prevent any harmful unauthorized use of, any interference with or any damage to the systems or networks or the data they contain." In section 273.8(9)(b), after the word "disclosure," the words "under this section," found in the C-42 version have been omitted.

Some amendments to the *National Defence Act* were also made in Bill C-36, the *Anti-terrorism Act*. Thus, clause 77 also adds new section 273.9 to the Act (see clause 122 in C-42). The new section indicates the duties of the Commissioner of the Communications

Security Establishment (CSE) with regard to the interception of communications originating from, directed to, or transiting through departmental or military computer systems and networks. The Commissioner of the CSE has jurisdiction to: review the activities of the department and the Forces to ensure compliance with the law; undertake an investigation in response to a complaint; and inform the Minister of National Defence and, if appropriate, the Attorney General if any activity of the department or the Forces does not appear to be in compliance with the law. However, compared to C-42 (clause 122), the wording of section 273.9(a) is different in C-55. This does not change the meaning of the provision. It states that one of the duties is to review activities "carried out under an authorization issued under that section," while C-42 referred to activities "of the Department and the Canadian Forces." However, C-55 does add to the section the words "and to report annually to the Minister on the review."

F. Amended Procedures for Provincial Requests for Military Assistance

Clause 78 amends section 278 in Part VI (Aid to the Civil Power), which deals with the call-up of the Canadian Forces "for the purpose of suppressing or preventing any actual riot or disturbance or any riot or disturbance that is considered as likely to occur." At the present time, when the attorney general of a province requests the help of the Forces to aid the civil power, the Chief of the Defence Staff (CDS) (or an officer designated by the CDS) can call up the number of military personnel and units considered necessary to deal with the actual or likely riot or disturbance. Clause 78 amends section 278 by adding the words "subject to such directions as the Minister considers appropriate in the circumstances and in consultation with that attorney general and the attorney general of any other province that may be affected..." The purpose of the amendment is to allow the Minister of National Defence to give some direction to the CDS when dealing with a request for assistance from a provincial attorney general, for example in the case of simultaneous requests for aid from other provinces.

G. Protection of Civil Employment of Reservists

Clause 79 adds new sections 285.01 to 285.13, designed to protect the jobs of Reservists called up on service "in respect of an emergency," defined as an insurrection, riot, invasion, war and, in the wake of the amendment of section 2 as indicated by clause 70, an

armed conflict. The new provisions do not cover Reservists' non-emergency service. It is worth noting that a compulsory call-up of the Reservists has not occurred in approximately 50 years.

The new sections 285.02 to 285.06 cover the obligation for an employer to reinstate a Reservist called up on duty as well as other issues such as employee benefits. Under new section 285.06, an employer cannot terminate the employment of a reinstated Reservist for a period of one year without reasonable cause. New section 285.03 offers another level of protection for Reservists who might return from the period of full-time duty requiring hospitalization for injuries or who are physically or mentally incapable of performing the duties of their civil employment. It indicates that the period of hospitalization or incapacity, up to a maximum of time specified in the regulations, will be deemed to be part of the period of the Reservist's service. As a result, Reservists who are injured or who are otherwise unable to carry out the duties of their civilian job and get the pay and benefits which go with it, will not be left high and dry because they will continue to have access to the benefits available to them during military service. New sections 285.08 to 285.11 specify the offences and the punishments for employers who do not reinstate Reservists returning after a compulsory call-up.

With regard to the implementation of the new provisions for Reservists, section 285.13 directs the Minister to consult with provincial governments as well as relevant persons, associations, bodies and authorities. As noted previously, for the new Part VII, the Minister involved can be someone other than the Minister of National Defence.

Measures to protect the jobs of Reservists have been the subject of debate for a number of years in Canada. To date, the Department of National Defence has relied on the work of the Canadian Forces Liaison Council to educate employers on the roles and value of Reservists and to encourage them to voluntarily reinstate Reservists absent because of training and military operations. Without job protection, some Reservists called up for compulsory service might find themselves in a difficult situation where they would have to choose between losing their jobs because of a long absence to carry out their military duties or breaking the law if they ignore the call-up order. As a result, a number of the Reservists on which the military counted upon might not report for duty following a call-up, thereby hampering Canada's ability to respond to a national or international emergency. Thus, job protection has benefits for both Reservists and the military chain of command. The war against terrorism and the increased possibility that Canada might face a major emergency no doubt encouraged the Department of National Defence to put in place a job protection mechanism. Such legislative protection for

Reservists has already been adopted in other allied countries, and in some cases (such as the United States) the protection is broader and covers training and voluntary deployments.

Despite the creation of the new job protection, the Canadian Forces Liaison Council and others will no doubt continue their efforts to educate employers on the role played by Reservists and on the value of voluntarily protecting their jobs. Over the years, some have argued against legislated job protection out of concern that a number of employers might be reluctant to hire Reservists because they might have to be absent for long periods of time. However, the new Part VII protects civil employment only when Reservists are called up for full-time service during an emergency, something that has not occurred since the Second World War. In other words, employers will likely recognize that the call-up of Reservists would occur only in exceptional circumstances and that there is little point in discriminating against Reservists because of this. At the same time, given the war against international terrorism and the possibility that Canada might one day face a major emergency, there are benefits in amending the *National Defence Act* to provide job protection, if only to reassure Reservists that their jobs will be protected if and when they are called up.

PART 12: *NATIONAL ENERGY BOARD ACT* (CLAUSES 82-93)

Part 12 of Bill C-55 amends the *National Energy Board Act* by extending the Board's powers and duties to include matters relating to the security of pipelines and international power lines. It authorizes the Board, with the approval of the Governor in Council, to make regulations respecting the security of pipelines and international power lines. It gives the Board the authority to waive the requirement to publish notice of certain applications in the *Canada Gazette*, if there is a critical shortage of electricity. It also authorizes the Board to take measures in its proceedings and orders to ensure the confidentiality of information that could pose a risk to security, in particular the security of pipelines and international power lines.

Clause 82 of the Bill enlarges the scope of the existing section 16.1 on confidentiality of information by applying the same rules to the security of energy transportation infrastructures. When it comes to disclosure of information, the amended *National Energy Board Act* embodies the principle that the interests of the undertakings concerned and the security of the infrastructures outweighs the public interest in disclosure.

Clause 83 adds the safety and security of pipelines and international power lines to the list of matters that the Board may keep under review, study, and report and make recommendations on to the Minister. The Board may also advise Ministers, officers and employees of any government department, ministry or agency, whether federal, provincial or territorial.

Under clause 84, the Board may order a company responsible for the operation of a pipeline, or the holder of a certificate for an international power line, to take appropriate steps to ensure the security of that pipeline or power line. With respect to the construction and operation of a power line, clause 87 introduces a waiver by the Board for the obligation normally incumbent upon an applicant to publish a notice of application in the *Canada Gazette*, if the Board considers that there is a critical shortage of electricity. The same provision is added to section 119.04 of the existing Act, with respect to applications to export electricity (clause 92). As opposed to Bill C-42, Bill C-55 makes the waiver conditional on the critical shortage being caused by terrorist activity.

Lastly, clause 93 of the Bill adds a new section (131(1)) to the existing general provisions, under which the Board may make regulations respecting the security of pipelines and international power lines, especially as regards standards, plans and audits relating to the security of pipelines and international power lines. Failure to comply with these regulations constitutes an offence liable to a fine and/or a term of imprisonment. Most of the other amendments proposed to the *National Energy Board Act* add the concepts of safety and security to various existing sections.

PARTS 14 AND 16: INFORMATION-SHARING IN RELATION TO MONEY LAUNDERING (CLAUSES 97 AND 99-100)

Clauses 97, 99 and 100 of the Bill deal with the sharing of information by and with the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC) which processes and analyzes reports from financial institutions and other designated entities on suspicious financial transactions with a view to combating money laundering. FinTRAC was created by the *Proceeds of Crime (Money Laundering) Act*, adopted in the previous Parliament (S.C. 2000, c. 17).

These new provisions appear to be of a housekeeping nature, because any of the information disclosed by or to FinTRAC can be used only to enforce the *Proceeds of Crime (Money Laundering) Act*.

Clause 97 amends the *Office of the Superintendent of Financial Institutions Act* (OSFI Act), thereby enabling the Superintendent of Financial Institutions (the federal regulatory body that oversees banks and other similar financial institutions) to disclose the following to FinTRAC: information relating to the policies and practices used by financial institutions to ensure compliance with their financial transaction record-keeping and reporting obligations under Part 1 of the *Proceeds of Crime (Money Laundering) Act*.

The OSFI Act already contains a number of exceptions to the general rule of confidentiality. These are designed to assist other agencies or departments in their supervisory or regulatory functions in relation to financial institutions. The additional confidentiality exception proposed in clause 97 deals with institutional policies and procedures relating to transaction record-keeping and reporting, rather than with information on particular transactions.

Clause 99 amends the *Proceeds of Crime (Money Laundering) Act* so as to extend FinTRAC's access to government databases to include national security databases, as well as those relating to law enforcement.

Clause 100 amends the *Proceeds of Crime (Money Laundering) Act*, to permit FinTRAC to disclose certain information to or receive it from other bodies or agencies that regulate or supervise persons or entities subject to that Act's financial transaction record-keeping and reporting requirements (i.e., those that deal with large amounts of money, such as banks and other financial sector businesses, law firms, casinos, etc.). The information received or disclosed by FinTRAC must relate to a person's or an entity's compliance with the transaction record-keeping and reporting requirements under the *Proceeds of Crime (Money Laundering) Act* and may be used only for purposes relating to such compliance.

PART 20: *THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION IMPLEMENTATION ACT*

Clause 105 of Bill C-55 enacts the *Biological and Toxin Weapons Convention Implementation Act*, whose stated purpose is "...to fulfil Canada's obligations under the *Convention on the Prohibition of the Development, Production and Stockpiling of*

Bacteriological (Biological) and Toxin Weapons and on their Destruction" (the Convention).[9] The proposed Act is divided into four parts: implementation of the Convention, enforcement, information and documents, and regulations. A related amendment to the *Criminal Code* is in clause 106(b.1) of the Bill.

Sections 6 and 7 of the proposed Act describe the activities it prohibits. Under section 6, no person shall develop, produce, retain, stockpile, otherwise acquire or possess, use or transfer any biological agent or toxin for any non-peaceful purposes or develop, produce, retain, stockpile, otherwise acquire or possess, use or transfer any weapon, equipment and other means of delivery of agents or toxins for use in armed conflict. Section 6 incorporates the text of Article I of the Convention with some slight modifications. The proposed Act adds the "possession" of biological agents and toxins to the list of prohibited activities, making it more explicit than the Convention. On the other hand, the Convention's reference to the "origin or method of production, of types and in quantities" in relation to the microbial or other biological agents or toxins is not included in the text of the proposed Act; the motivation for this change is unknown. The Act's statement that activities carried out for biological defence are exempt from the prohibition is not included in the Convention.

Section 7 of the proposed Act recognizes that a number of statutes already serve to control the production, possession, use and transfer of biological agents. These Acts include: the *Food and Drugs Act*, the *Health of Animals Act*, the *Plant Protection Act*, the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act*, the *Meat Inspection Act*, the *Fisheries Act*, and the *Pest Control Products Act*. Section 7 allows for a licensing regime either under section 20 of the Act or under any other Act of Parliament. It prohibits the import and export of biological agents, except as authorized under the *Export and Import Permits Act* which already has a number of biological agents on its Export Control List, thereby requiring a permit for their exportation.

Enforcement of the proposed Act is covered in sections 8 through 16. Section 8 allows for the establishment of a National Authority if required, either to ensure compliance with the Convention or under international obligations. This National Authority would be responsible for coordination among the various federal departments involved and between levels of

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(9) The full text of the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction* is available at: http://disarmament.un.org/TreatyStatus.nsf/44E6EEAB9436B78852568770078D9C0/FFA7842E7ED1D0078525688F0070B82D?OpenDocument.

government, because the proposed Act would be binding on federal and provincial jurisdictions pursuant to section 5. This section on enforcement was subjected to minor changes since the introduction of C-42. In section 9, the Minister will, in addition to the designation of inspectors, have responsibility for setting the conditions applicable to their activities. Two additional modifications in section 10 are a consequence of the previous change.

Section 11 deals with the powers of entry and inspection granted to inspectors, who may be designated by the Minister. Inspections may be carried out without a warrant, except in the case of a "dwelling-house," where one has a greater expectation of privacy and where a warrant, or the occupants' consent, is required. Section 12 of the proposed Act is completely new in this version of the Bill. Under Bill C-42, the powers relating to seizure, detaining, disposal and forfeiture of biological agents, their means of delivery and any information relevant to the administration of the Act or regulations would have followed the provisions laid out in sections 40 through 49 of the *Health of Animals Act*. New section 12(1) declares that the powers relating to search and seizure must follow the provisions respecting search warrants set out in the *Criminal Code* at section 487. New sections 12(2) and 12(3) relating to the necessity of a warrant and notice of reason for seizure follow section 41(4) and section 42 of the *Health of Animals Act*. Section 14 provides that those found in violation of sections 6 or 7, and 13, 17, 19, or section 18(2) are guilty of an offence and outlines maximum punishments. An additional section has been introduced at 13(2) to guarantee assistance to inspectors in the performance of their duties.

Sections 17, 18 and 19 of the proposed Act pertain to information and documents. They require any person who develops, produces, retains, stockpiles, otherwise acquires or possesses, uses, transfers, exports or imports any microbial or other biological agent, any toxin or any related equipment identified in the regulations to provide any information and documentation that the Minister may request. Section 20 lists potential subjects and aspects of the Act on which the Governor in Council may make regulations on the recommendation of the appropriate Minister. Section 20(e) has been modified to reflect the changes in section 12.

Amendments to the *Criminal Code* are dealt with in clause 106(b.1) of the Bill, which adds "production, etc., of biological agents and means of delivery and unauthorized production, etc.," to the list of offences for which, if there are reasonable grounds to believe that such an offence has been or will be committed, authorization to intercept a private communication may be granted to a public or peace officer.

A. The Biological and Toxin Weapons Convention

The Convention prohibits the development, production and stockpiling of bacteriological (biological) and toxin weapons for any purpose other than prophylactic, protective or other peaceful purposes and thus supplements the prohibition on use of biological weapons contained in the 1925 Geneva Protocol. The Convention prohibits not only biological and toxin agents, but the munitions and equipment used to deliver them as well. The Convention was the first multilateral disarmament treaty to ban the use and production of an entire class of weapons. However, it is limited in its effectiveness because it lacks a formal verification regime, without which it is impossible to verify compliance. The Convention entered into force on 26 March 1975. Canada was one of the original signatories to the Convention, signing it on 10 April 1972 and ratifying it on 18 September 1972. To date, 163 parties have signed the Convention; of these, 144 have ratified it.

The text of the Convention is short, comprising 15 Articles and spanning only four pages. This is in contrast to the *Chemical Weapons Convention*, which is more than 140 pages in length and contains detailed instructions on verification procedures. The first four Articles of the Convention describe most of the responsibilities assumed by States Parties. As described above, Article I delineates the activities prohibited by the Convention. Article II calls for the destruction, or diversion to peaceful purposes, of all biological or toxin weapons. Article III prohibits the encouragement and assistance of any group, state or individuals in their attempts to manufacture or acquire biological agents, toxins, weapons, equipment or means of delivery as specified in Article I. Article IV outlines the requirement for States Parties to implement the Convention.

B. National Implementation of the Convention

When Canada signs an international agreement, ratification may or may not require the implementation of legislation or amendments to existing legislation. Under Article IV of the Convention, each State Party is required to "...take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere." However, the implementation of the Convention in Canada did not result in any new

domestic legislation.[10] In light of recent events, however, the threat of subnational groups or individuals becoming involved with biological weapons in Canada is now perceived great enough to warrant action.[11] Thus, the Convention, which Canada has been bound by internationally for several decades, is now being fully implemented under federal legislation.

C. Biological Weapons Policy and Defence Research in Canada

According to a Department of Defence Policy Directive, "Canada has never had and does not now possess any biological weapons (or toxin based weapons), and will not develop, produce, acquire, stockpile or use such weapons."[12] The Directive goes on to state:

> It is recognized that, under present world conditions, the CF [Canadian Forces] may be committed to participate in a war where nuclear, biological or chemical weapons are used. The CF will be prepared to take the appropriate protective measures to defend elements of the CF. As a result, the CF will continue to study and to develop the knowledge necessary to ensure that the defensive measures are adequate.[13]

Thus, Canada is in full compliance with Article I of the Convention, and no action is necessary to fulfil our obligation under Article II, which would require the destruction of any existing stocks of such weapons.

Subsection 6(2) of the proposed Act specifically addresses the issue of research for biological defence. Research on biological and chemical defence undertaken by the Department of National Defence is conducted at several installations, the main one being the

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(10) Marc Miller, *Implementing Canada's Obligations Under the Prospective Protocol to the Biological and Toxin Weapons Convention: Planning for a National Authority*, International Security Research and Outreach Program, Non-Proliferation, Arms Control and Disarmament Division, March 2000, www.dfait-maeci.gc.ca/arms/btwc_national_authority_paper-e.pdf, p. 8.

(11) For further information on the subject of bioterrorism, please refer to the following documents: François Côté and Geneviève Smith, *Bioterrorism*, PRB 01-19E, Parliamentary Research Branch, Library of Parliament, 24 October 2001, lopparl/lopimages2/PRBpubs/bp1000/prb0119-e.htm; Canadian Security Intelligence Service, *Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism*, 18 December 1999, www.csis-scrs.gc.ca/eng/miscdocs/200002_e.html.

(12) NDHQ Policy Directive P3/85 CF Policy – Nuclear, Biological and Chemical (NBC) Defence. The full text of the Directive can be found in Appendix E of *Research, Development and Training in Chemical and Biological Defence within the Department of National Defence and the Canadian Forces*, William H. Barton, National Defence, Ottawa, 31 December 1988, www.vcds.dnd.ca/bedrc/barton/appe_e.pdf.

(13) *Ibid.*

Defence Research Establishment Suffield (DRES). The primary focus of its research includes hazard assessment, detection and identification, physical protection, medical countermeasures and verification technology. Canadian research in defence against CB (chemical and biological) agents has produced a vast amount of information on the toxicology and infectivity of CB agents as well as the behaviour of liquids, gases and aerosols when released in the atmosphere. These installations have historically provided Canadian Forces with some of the best defensive equipment in the world. Examples of direct applications of this research include: HI-6, a universal nerve agent antidote; skin decontaminants; and CB agent sampling and detection equipment.

The Biological and Chemical Defence Review Committee (BCDRC) annually reviews the Department of National Defence's research, development and training programs in biological and chemical defence "...to ensure that all activities within those programs are, in fact, defensive in nature and are conducted in a professional manner with no threat to public safety or the environment."[14] In its most recent report, the Committee concluded that there is no evidence of duplicity within the Government's CB defence programs, nor is there evidence that offence-related programs are being conducted.[15]

Research on biological agents for peaceful purposes other than defence is also conducted in Canada at numerous sites. Among these are veterinary research and clinical laboratories that investigate animal diseases and pathogens, as well as academic, commercial and government labs that perform research on pathogens, toxins, and medical treatments. The inspection, information and documentation requirements of the proposed Act will apply to these bodies.

D. The Protocol to the Convention and Recent Developments

Article XII of the Convention calls for a conference of States Parties at Geneva to review the Convention's operation within five years of its entry into force. The first of these Review Conferences was duly held in 1980, and subsequent conferences were held in 1986, 1991 and 1996. The Fourth Review Conference recommended that conferences of States Parties to

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(14) Heather D. Durham (Chair), Colin R. McArthur and Kenneth L. Roy, *2000 Annual Report of the Biological and Chemical Defence Review Committee*, September 2000, www.vcds.dnd.ca/bcdrc/reports/bcdrcc00.pdf, p. C-1.

(15) *Ibid.*, p. 2.

review the operation of the Convention should be held at least every five years. Thus, the fifth and most recent conference was held at Geneva from 19 November to 7 December 2001.

At a Special Conference of the States Parties to the Convention held at Geneva in 1994, an Ad Hoc Group was established, the aim of which was to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.(16) After six years of negotiations, the majority of the text has been agreed to by consensus, yet several aspects of the Protocol remain unresolved. In March 2001, the Chairman of the Ad Hoc Group prepared a composite text which contained compromise suggestions on outstanding issues in an attempt to help "... bridge the remaining gaps..." and facilitate the completion of the draft Protocol.(17) However, in July 2001, the U.S. Special Negotiator for Chemical and Biological Arms Control Issues announced his country's rejection of the draft Protocol and its intent to develop other ideas and approaches to help strengthen the Biological Weapons Convention.(18)

The United States further elaborated on its position regarding the Protocol in November 2001 in the remarks of the Under Secretary for Arms Control and International Security, made to the Fifth Review Conference. Interestingly, a proposal was included that States Parties to the Convention agree to enact national legislation to make it a criminal offence for anyone to engage in activities prohibited by the Convention and to enhance their bilateral extradition agreements with respect to biological weapons offences.(19) This latest Review Conference was adjourned on 7 December 2001, until 11-22 November 2002. Although a draft declaration was nearly complete, serious disagreement over the issue of the Ad Hoc Group remained, and it seemed unlikely that this could be resolved in the remaining time.

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(16) *Final Report, Special Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 19-30 September 1994*, www.brad.ac.uk/acad/sbtwc/spconf/spconf1.htm. For more detailed information on all aspects of the Review Conferences, the work of the Ad Hoc Group and the Protocol, please refer to the Joint SIPRI-Bradford Chemical and Biological Warfare Project, http://projects.sipri.se/cbw/cbw-sipri-bradford.html.

(17) *Composite Text – Address by the Chairman of the Ad Hoc Group Ambassador Tibor Toth*, 2001, www.brad.ac.uk/acad/sbtwc/other/video/tt_addrs.htm.

(18) *Biological Weapons Convention – Statement by the United States to the Ad Hoc Group of Biological Weapons Convention States Parties*, Geneva, Switzerland, 25 July 2001, www.state.gov/t/ac/rls/rm/2001/5497.htm

(19) *Biological Weapons Convention – Remarks to the 5th Biological Weapons Convention RevCon Meeting*, Geneva, Switzerland, 19 November 2001, www.state.gov/t/us/rm/janjuly/6231.htm.